LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 6 1972
E. ROBERT SEAVER, CLERK

No. 70-286

In the Supreme Court of the United States

OCTOBER TERM, 1971

IOWA BEEF PACKERS, INC., PETITIONER

v.

EDWARD D. THOMPSON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ERWIN N. GRISWOLD,
Solicitor General,
A. RAYMOND RANDOLPH, JR.,
Assistant to the Solicitor General,
Department of Justice,
Washington, D.C. 20530.

RICHARD F. SCHUBERT,
Solicitor,
CARIN ANN CLAUSS,
MICHAEL H. LEVIN,
HELEN W. JUDD,
Attorneys,
Department of Labor,
Washington, D.C. 20210.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Interest of the United States	4
Statement	5
Summary of Argument	9
Argument	12
A. Congress intended to grant employees direct access to the courts in Section 16(b) suits	14
1. Liquidated damages	15
2. Limitations on actions	17
3. Claims by employee representative	18
4. Public policy of the Act and the need for uniformity	19
5. Enforcement by the Secretary of Labor	21
B. The decisions of this Court implementing national labor policy confirm Congress' intent in the Fair Labor Standards Act to allow suits for violation of the Act to be brought directly in court	22
Conclusion	22

Citations

Cases:	
Adams v. *Union Dime Savings Bank*, 48 F. Supp. 1022	27
American Enka Corp. & United Textile Workers of America Local 815, 68–2 CCH Arb. ¶ 8691 (Morristown, Tennessee, September 3, 1965)	26
Andacht v. *William Andacht, Inc.*, 183 N.Y.S., 2d 62	27
Armour & Co. v. *Wantock*, 323 U.S. 126	26
Bailey v. *Karolyna Co.*, 50 F. Supp. 142	27
Ballard v. *Consolidated Steel Corp., Ltd.*, 61 F. Supp. 996	27
Beckley v. *Teyssier*, 332 F. 2d 495	27
Bernhardt v. *Polygraphic Co.*, 350 U.S. 198	14, 21
Berman v. *N. Seidman & Son*, 22 CCH Lab. Cas. ¶ 67,362	27

453-580—72——1

Cases—Continued

	Page
Biggs v. *Joshua Hendy Corp.*, 183 F. 2d 515	26
Brooklyn Savings Bank v. *O'Neil*, 324 U.S. 697	4, 19, 20
Carey v. *Westinghouse Corp.*, 375 U.S. 261	24, 28
City Bank Farmers Trust Co., Matter of, 179 Misc. 770, 39 N.Y.S. 2d 842	27
Coleman v. *Jiffy June Farms, Inc.*, No. 71-1412, (C.A 5, decided November 29, 1971	25
Collyer Insulated Wire, 77 LRRM 1931, 192 NLRB No. 150	28
Donahue v. *Susquehanna Collieries Co.*, 138 F. 2d 3	27
Douglass v. *Hurwitz Co.*, 145 F. Supp. 29	26
E. & A. Building Corp. v. *Gunderson*, 6 CCH Lab. Cas. ¶ 61,556	27
F. W. Stock & Sons v. *Thompson*, 194 F. 2d 493	26
Evans v. *Hudson Coal Co.*, 165 F. 2d 970	27
Garrity v. *Bagold Corp.*, 42 N.Y.S. 2d 257, modified and affirmed, 267 App. Div 353, 36 N.Y.S. 2d 637	27
Glenn L. Martin Nebraska Co. v. *Culkin*, 197 F. 2d 981, certiorari denied, 344 U.S. 866	26
Lexington Federation of Telephone Workers v. *Kentucky Telephone Corp.*, 94 F. Supp. 894, affirmed, 202 F. 2d 153	27
Mackin v. *Bagold Corp.*, 8 CCH Lab. Cas. ¶ 62,183	27
Martino v. *Michigan Window Cleaning Co.*, 327 U.S. 173	25
McClanahan v. *Mathews*, 440 F. 2d 320	8
McKinney v. *Missouri-K.-T. R. Co*, 357 U.S. 265	12, 22, 24, 25, 27, 29
Mitchell v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288	4, 21
National Labor Relations Board v. *Acme Industrial Co.*, 385 U.S. 432	28
National Labor Relations Board v. *Strong*, 393 U.S. 357	24
Overnight Motor Co. v. *Missel*, 316 U.S. 572	20
Republic Steel Corp. v. *Maddox*, 379 U.S. 650	11, 19, 22, 23, 27
Roland Co. v. *Walling*, 326 U.S. 657	20
Rothman v. *Publicker Industries*, 201 F. 2d 618	8
Schulte Co. v. *Gangi*, 328 U.S. 108	16, 17
Schultz v. *A-1 Ambulance Service, Inc.*, 63 CCH Lab. Cas. ¶ 32,393, E.D. Ark., decided September 22, 1970	26

Cases—Continued Page
Skidmore v. *Swift & Co.*, 323 U.S. 134 26
Stone v. *William Andacht, Inc.*, 21 Misc. 2d 214, 191 N.Y.S. 2d 116 27
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 22
U.S. Bulk Carriers v. *Arguelles*, 400 U.S. 351 8, 12, 22, 24, 25, 27, 28, 29
United Steelworkers of America v. *American Manufacturing Co.*, 363 U.S. 564 23
United Steelworkers of America v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 16, 23
United Steelworkers of America v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 16, 23
Vaca v. *Sipes*, 386 U.S. 171 18
Walling v. *Hardwood Co.*, 325 U.S. 419 25
Walling v. *Helmerich & Payne*, 323 U.S. 37 20
Watkins v. *Hudson Coal Co.*, 151 F. 2d 311, certiorari denied, 327 U.S. 777 27
Wilko v. *Swan*, 346 U.S. 427 21
Wright v. *Carrigg*, 275 F. 2d 448 8
Statutes and regulation:
Fair Labor Standards Act of 1938, 52 Stat. 1060, as amended, 29 U.S.C. 201, et seq.:
Section 2 (29 U.S.C. 202) 22
Section 2(a) (29 U.S.C. 202(a)) 14
Section 3(o) (29 U.S.C. 203(o)) 19
Section 6 (29 U.S.C. 206) 20
Section 7 (29 U.S.C. 207) 4, 5, 19, 20, 25
Section 7(a)(1) (29 U.S.C. 207(a)(1) 2, 13, 25
Section 16(b) (29 U.S.C. 216(b)) 2, 3, 4, 5, 8, 9, 10, 14, 15 16, 18, 21, 29
Section 16(c) (29 U.S.C. 216(c)) 4, 21
Section 17 (29 U.S.C. 217) 4, 21
Labor Management Relations Act of 1947:
Section 203(d) (29 U.S.C. 173(d)) 23
Section 301 (29 U.S.C. 185) 22
Portal-to-Portal Act of 1947, 61 Stat. 84, as amended, 29 U.S.C. 251, et seq.:
Section 4, 29 U.S.C. 254 19
Section 6, 29 U.S.C. 255 5, 10, 17
Section 11, 29 U.S.C. 260 7, 15, 16
29 C.F.R. 778.316–.317 25
29 C.F.R. 785.17–.19 26

Miscellaneous:

	Page
93 Cong. Rec. 2358	18
Cox & Bok, *Labor Law* (1965 ed.)	21
H. Conf. Rep. 326, 80th Cong., 1st Sess.	17
H.R. Rep. No. 1452, 75th Cong., 1st Sess.	20
H.R. Rep. No. 2182, 75th Cong., 3d Sess.	20
H.R. Rep. No. 71, 80th Cong., 1st Sess.	17
Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor, 75th Cong, 1st Sess.	15
S. Rep. No. 48, 80th Cong., 1st Sess.	17, 18
Warren & Bernstein, *A Profile of Labor Arbitration*, 16 Lab. Arb. 970 (1951)	21

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-286

IOWA BEEF PACKERS, INC., PETITIONER

v.

EDWARD D. THOMPSON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Iowa (A. 13-28) [1] are reported at 185 N.W. 2d 738. The rulings of the trial court denying petitioner's motion to dismiss (A. 7-8) and entering judgment for respondents (A. 9-10) are not reported.[2]

[1] "A." refers to the printed Appendix; "R." refers to the Record on appeal.

[2] The trial court's findings and conclusions are set forth at R. 41-45.

JURISDICTION

The judgment of the Supreme Court of Iowa was entered on April 9, 1971. (A. 13). The petition for a writ of certiorari was filed on June 16, 1971, and was granted on October 12, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether employees must exhaust any grievance procedures provided by a collective bargaining agreement before they can sue in court, pursuant to Section 16(b) of the Fair Labor Standards Act, to recover wages withheld in violation of the maximum hours provision of the Act.[2]

STATUTES INVOLVED

Sections 7(a)(1) and 16(b) of the Fair Labor Standards Act, 52 Stat. 1060, *et seq.*, as amended, 29 U.S.C. 207(a)(1) and 216(b), provide as follows:

> Sec. 7(a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, * * * for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one

---

[2] This brief does not discuss the additional question raised by respondents concerning the arbitrability of their claim under the contract. That question is of primary concern to the parties and does not, by itself, have any potential impact on the effective enforcement of the Fair Labor Standards Act.

and one-half times the regular rate at which he is employed.

* * * * *

Sec. 16(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 * * * in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection.

INTEREST OF THE UNITED STATES

The Court's decision in this case is likely to have a significant impact on enforcement of an employee's federal rights under the Fair Labor Standards Act and on federal labor policy.

The Secretary of Labor, upon the employee's request or upon his own initiative in injunction suits, may sue to recover wages withheld in violation of the minimum wage and maximum hours provisions of the Act. See 29 U.S.C. 216(c), 217; see also note 16, *infra*. But private suits by individual employees under Section 16(b), 29 U.S.C. 216(b), are also an important method of securing compliance with the Act. See *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 709; *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288. The Secretary is therefore concerned with preserving Section 16(b) as an effective enforcement tool. The Secretary is also concerned with having the Act interpreted and applied uniformly throughout the country so that employers and employees will know what the Act requires and so that no employer will gain an unfair advantage over his competitor. Also of significance to the United States is the public purpose of the maximum hours provision involved in this case (29 U.S.C. 207), which was intended to exert financial pressure on employers to increase employment, as well as to compensate individual employees for the burden of working over 40 hours in a workweek.

STATEMENT

On April 28, 1967, respondents (13 maintenance men)[4] brought separate actions pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. 216(b), against petitioner (their employer) in an Iowa District Court for overtime compensation due under Section 7 of the Act, 29 U.S.C. 207, and for liquidated damages and attorney's fees under Section 16(b) (A. 1–2).[5] Respondents worked in excess of forty hours a week and were engaged in the production of goods for commerce (A. 5). They sought overtime compensation for their uncompensated meal periods, during which they were required to remain "on call" for frequent emergency repairs, and claimed that this 30-minute per day period constituted compensable working time under the Act (A. 3). Petitioner, in its answer, denied this contention (A. 5) and claimed, as an "affirmative" defense, that respondents were "not entitled" to bring these actions because they had failed to exhaust the grievance procedures established by collective bargaining (A. 6).

Under the collective bargaining agreement, "any individual employee desir[ing] to process a grievance pertaining to a violation of the Agreement * * * shall discuss the matter with his immediate supervisor," and, "[i]n the event he does not receive a satisfactory answer, he shall within Ten (10) days of the knowl-

[4] Another employee filed an identical suit on December 12, 1967 (A. 1).

[5] The suits sought overtime compensation for the period April 28, 1965, to April 28, 1967 (A. 2–3). The relevant statute of limitations barred recovery of wages withheld prior to this period (see 29 U.S.C. 255).

edge of the incident submit a written grievance to his immediate supervisor" (A. 29). The agreement provides for two additional steps to be handled by "the Union grievance committee or any officers designated by the Union," after which the grievance—if "not satisfactorily adjusted"—"may be submitted to an impartial arbitrator" whose decision in the grievance [is] final and binding on the parties, provided he shall not have authority other than to apply the terms and conditions specifically set forth in the Agreement" (A. 29–30). The agreement also states that "the time allowed to process grievances is adequate" and that "[i]f the Union fails to process a grievance in the time specified herein, the grievance in question is ended" (A. 31). Other sections of the collective bargaining agreement provide that employees shall have a "lunch period" of unspecified duration (A. 29) and that "[t]ime and one-half (1½) will be paid for all hours worked in excess of forty (40) in any one week" (A. 29). The contract does not define what is meant by "hours worked."

Contrary to petitioner's statement (Pet. Br., p. 6), respondents did not seek in the present suit to enforce a work-free lunch period or any other provision of the collective bargaining agreement.[6] Instead, they

[6] One of petitioner's maintenance men did file a grievance in 1966, complaining that he was being required to work during his lunch period. This grievance was "settled" when petitioner's industrial relations officer met with the maintenance men in February 1966, and advised them that the company would stagger their shifts and that they could leave the premises for lunch (A. 14–15; R. 15, 29–31). In fact, however, the situation remained unchanged (A. 15).

claimed only that they were entitled, under the provisions of the Fair Labor Standards Act, to overtime compensation (at the statutory rate of one and one-half times their regular rate) for lunch periods during which they remained on call.

The trial court denied petitioner's motion to dismiss, stating that "the right of recovery for work performed which is compensable under the provisions of the Fair Labor Standards Act of 1938 as amended, cannot be restricted, abrogated or nullified by any agreement entered into by an employee and employer, * * * or by and through a collective bargaining agreement entered into with the employer and the representative of the employees" (A. 8). In reaching this result, the trial court pointed out that "[i]f * * * under the act such 30 minute meal periods are compensable, the fact that [respondents'] employment in [petitioner's] plant was subject to a collective bargaining agreement or that [respondents] did not proceed as provided under the grievance procedures of such agreement * * *, does not preclude recovery by the [respondents] for wages due for work which is compensable under the act" (A. 8).

The suits were tried together and on October 20, 1969, the trial court, resolving all factual and legal issues in favor of respondents, granted them unpaid overtime compensation and attorney's fees (A. 9–10).[7]

---

[7] The trial court denied liquidated damages on the mistaken ground that "none of the [respondent-employees] have shown themselves to be entitled to liquidated damages" (A. 9). Although Section 11 of the Portal-to-Portal Act (29 U.S.C. 260) permits a court, "in its sound discretion," to award a lesser

The Supreme Court of Iowa, dividing 5–2 on the question "whether workmen are required to attempt contract arbitration before they can sue for overtime compensation under the Fair Labor Standards Act" (A. 14), affirmed the judgment of the trial court. The majority, relying on this Court's recent decision in *U.S. Bulk Carriers* v. *Arguelles*, 400 U.S. 351, concluded that the general policy favoring arbitration cannot take precedence over "the specific Congressional intent * * * that workmen should have free access to the courts in FLSA cases" (A. 19). The court found this intent to be "manifest" from the "broad Congressional policy expressed in § 2 of FLSA" and the "provisions giving employees strong and detailed rights in court" (A. 19). The majority stated that the objectives of the Fair Labor Standards Act encompass "more than simply wage relief for employees; they include broad economic consid-

---

amount of liquidated damages than that specified in Section 16(b) of the Fair Labor Standards Act, or none at all, it does so only "if the *employer* shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended" (emphasis added). This limited exception, as pointed out in *Wright* v. *Carrigg*, 275 F.2d 448, 449 (C.A. 4), imposes upon the "delinquent employer [who would] escape the payment of liquidated damages [a] * * * 'plain and substantial burden of persuading the court by proof that his failure to obey the statute was both in good faith and predicated upon such reasonable grounds that it would be unfair to impose upon him more than a compulsory verdict'." See also *Rothman* v. *Publicker Industries*, 201 F.2d 618, 620 (C.A. 3); *McClanahan* v. *Mathews*, 440 F.2d 320, 322 (C.A. 6). Respondents, however, did not appeal from the trial court's denial of liquidated damages.

erations—improvement in commerce among the states." "[T]he remedies provided by the act are part of the Congressional scheme to obtain employer compliance with the act and hence achievement of [its] broader objectives." (A. 19.) The dissenting judges found no distinction between arbitrating contract and statutory rights, and stated that, in the absence of extraordinary circumstances, grievance procedures should be exhausted before suits can be brought to enforce statutory rights (A. 27).[8]

SUMMARY OF ARGUMENT

The employees' complaint in this case is based entirely on the maximum hours provision of the Fair Labor Standards Act and is in no way dependent upon the collective bargaining agreement. The issue is thus whether employees seeking to assert claims derived solely from the Act are barred from court because they did not first invoke the grievance procedures in the collective bargaining agreement.[9]

A

In Section 16(b) of the Fair Labor Standards Act, Congress provided that courts should decide claims involving the maximum hours and minimum wage provisions of the Act. Under Section 16(b), employees are entitled to recover wages unlawfully withheld and, in addition, an equal amount as liquidated damages,

---

[8] The petition for a writ of certiorari presents no question regarding the correctness of the Iowa Supreme Court's ruling on the merits.

[9] Petitioner has not contested the Iowa Supreme Court's decision on the merits.

unless the employer satisfies the court that his violation was in good faith. Employees are also entitled to an attorney's fee if they prevail. Actions under Section 16(b) may be commenced within two (or in certain cases three) years after the cause of action accrued, 29 U.S.C. 255.

If employees may not bring actions in court unless they have first exhausted contract grievance procedures, Congress' intent to protect employees through Section 16(b) and related provisions would be frustrated. For example, an arbitrator, who is confined to interpreting the bargaining agreement, may not be authorized to award liquidated damages and, in any event, Congress entrusted courts with the responsibility for deciding whether liquidated damages should be granted. Moreover, liquidated damages under Section 16(b) cannot be bargained away and therefore are not a proper subject for the grievance process.

Also, under the Act employees have at least two years within which to bring their suit, whereas grievances may have to be brought within a substantially shorter period of time, depending on the terms of the contract. Yet Congress provided the two-year period in order to achieve uniformity throughout the nation and to protect employees who may not know their rights under the law. Both of these policies would be frustrated by barring employees from court if they have not first processed their F.L.S.A. claims by filing grievances.

Moreover, Congress specifically determined that employees, not their representative, should prosecute

their claims under the Act. In 1947, Congress repealed the provision of the Act allowing suits to be brought on behalf of individual employees by their representative. However, if an employee's F.L.S.A. claims must be prosecuted through grievance procedures, the employee's representative—the union—will control the claim.

In addition, the grievance process, which is concerned with individual disputes, cannot implement fully the public policy of the Act and is not conducive to the uniformity necessary in order to avoid giving certain employers an unfair advantage over their competitors. These goals can be fulfilled only if employees have direct access to the courts. That Congress intended the courts to decide F.L.S.A. claims is further indicated by the fact that the Secretary of Labor may sue to recover wages withheld in violation of the Act even when the employee himself is unable or unwilling to bring the action on his own behalf.

B

This Court's decision in *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650, cannot be relied upon to show that national labor policy requires employees to invoke grievance procedures before raising statutory claims in court. The doctrine of *Republic Steel* is based on the desirability of utilizing grievance procedures in disputes involving interpretation of the collective bargaining agreement.

In the present case, however, the employees' claims are derived solely from the Act; interpretation of the

collective bargaining agreement is not in issue. In similar contexts this Court has held that employees are entitled to direct access to the courts in order to enforce their statutory rights. *McKinney* v. *Missouri-K.-T. R. Co.*, 357 U.S. 265, 268; *U.S. Bulk Carriers* v. *Arguelles*, 400 U.S. 351. Indeed, there are even stronger reasons for allowing direct access to the courts for F.L.S.A. claims than were present in *McKinney* and *Bulk Carriers*. Unlike those cases, where determination of the statutory rights depended in part on interpretation of the collective bargaining agreement, the employees' rights under the Act in this case are in no way dependent upon or derived from the contract. Furthermore, Congress' intent to afford direct access to the courts is even more apparent from the provisions and policy of the present Act than it was in *Bulk Carriers* or *McKinney*.

In view of Congress' clear intention to afford employees an unqualified right to sue in court, and in view of the fact national labor policy would in no way be served by requiring employees to pursue their statutory claims through grievance procedures, the employees in this case were not barred from recovering in court wages found by the court below to have been withheld in violation of the maximum hours provision of the Act.

ARGUMENT

It is important to identify the precise nature of the employees' claim for unpaid wages in this case. They are not asserting "substantive rights * * * derived solely" from the collective bargaining agreement, as

petitioner contends (Pet. Br., pp. 6–8, 10-11, 15–17, 19). Nor are they seeking a "work-free * * * lunch period," as petitioner also asserts (Pet. Br., pp. 8, 10). Instead, their complaint (A. 2–4) is based solely on the provisions of the Fair Labor Standards Act requiring that a covered employee be paid at "a rate not less than one and one-half times the regular rate at which he is employed" for all hours worked in excess of 40 hours per workweek (29 U.S.C. 207(a)(1)). Specifically, they alleged that in addition to working 40 hours per week, they were on-call for 30 minutes per day during their lunch period, that under the Act this constituted working time compensable at one and one-half times their regular rate of pay, and that their employer refused to compensate them for this (A. 2-4).

It is apparent that these complaints are neither based on the contract nor in any way dependent upon it; the contract is not even mentioned in the complaints. Indeed, the claims and the legal and factual issues raised by these employees would be precisely the same regardless of whether a contract existed or not.

The issue here is thus whether employees seeking to assert statutory rights in court pursuant to the Fair Labor Standards Act are barred from doing so because they did not first invoke the grievance and arbitration procedure in the collective bargaining agreement.[10] Resolution of this issue depends upon

[10] Petitioner does not argue that it should prevail on the merits.

whether Congress intended to afford employees direct access to the courts to enforce their claims under the Act. In light of the wording, purposes, and legislative history of the Fair Labor Standards Act, and in view of the role of arbitration in national labor policy, it is our position that these employees were entitled to go directly to court for a decision on the question whether their employer violated the Act and thereby became liable to them.

A. CONGRESS INTENDED TO GRANT EMPLOYEES DIRECT ACCESS TO THE COURTS IN SECTION 16(b) SUITS.

As this Court stated in *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198, 203, the "nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action." In Section 16(b) of the Fair Labor Standards Act Congress not only provided that courts should decide claims involving the maximum hours and minimum wage provisions of the Act, but also defined an employee's statutory right of recovery in relation to litigation. With respect to Section 16(b) and other related sections of the Act, the tribunal chosen by Congress is more than simply an "important part of the parcel of rights" conferred by the Act; it is inextricably intertwined with the rights and remedies Congress provided and cannot be altered without changing the very nature of what Congress guaranteed to employees in order to correct "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. 202(a).

Thus, Section 16(b) itself speaks in terms of the "right provided by this subsection to bring an action." Employees who have not been paid minimum wages or overtime compensation are entitled "to recover such liability * * * in any court of competent jurisdiction." 29 U.S.C. 216(b). They are, in addition, entitled to an "equal amount as liquidated damages," unless the employer shows "to the satisfaction of the court" that his violation was in "good faith" and that he had "reasonable grounds" for believing he had not violated the Act, in which case the "court may, in its sound discretion" award a lesser amount of liquidated damages or none at all. 29 U.S.C. 216(b), 260. Moreover, if the employee prevails, the "court in such action shall * * * allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. 216(b). And the employee may commence his action "within two years after the cause of action accrued" or within three years if the employer's violation is willful. 29 U.S.C. 255.

Requiring employees to raise their F.L.S.A. claims through grievance procedures would substantially alter the rights granted by the Act, and alter them in a way Congress could not have intended. Indeed, when the proposed Act was under consideration, a management spokesman advocated revision to provide for enforcement through grievance procedures, *Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor*, 75th Cong., 1st Sess. 694–695 (1937), but Congress never adopted such a change, either explicitly or implicitly, as examination of the Act's provisions makes clear.

1. *Liquidated damages.* "[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement" and "his award is legitimate only so long as it draws its essence from the collective bargaining agreement." *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597.[11] In addition to the point that F.L.S.A. claims do not generally depend on interpretation of the contract, of which more hereafter, it is at best doubtful that an arbitrator could award liquidated damages, as Section 16(b) provides. An arbitrator would appear to be confined to awarding only unpaid wages since he is limited to interpreting and applying the contract. Moreover, in 29 U.S.C. 260 Congress designated courts, not arbitrators: *judicial* discretion is to be exercised in deciding whether less than the liquidated damages in Section 16(b) should be granted. The employer's "good faith" and "reasonable grounds for believing" that he had not violated the Act, which are to guide the court's discretion under 29 U.S.C. 260, are matters traditionally determined in judicial proceedings.

Furthermore, grievance proceedings are a part of the ongoing process of collective bargaining between the union and the employer. See *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580–581. But liquidated damages under Section 16(b) are both compensatory and an aid to enforcement and are not subject to negotiation. For this reason the Court held in *Schulte Co.* v. *Gangi*, 328 U.S. 108, 114, that

[11] This quotation accurately describes the arbitrator's authority under the contract in the present case (A. 30).

"the remedy of liquidated damages [in Section 16(b)] cannot be bargained away by bona fide settlements of disputes over coverage"—and this necessarily includes settlement of such disputes through the grievance process.[12]

2. *Limitations on actions.* The Act now provides that employees may bring F.L.S.A. suits within two years after their cause of action accrued (or three years if the employer's violation is willful). 29 U.S.C. 255. Congress added this provision in 1947, 61 Stat. 87. Prior to that time state law controlled limitations on actions and Congress found this to have created undesirable "confusion and a lack of uniformity throughout the Nation." H.R. Rep. No. 71, 80th Cong., 1st Sess., at p. 7; H. Conf. Rep. 326, 80th Cong., 1st Sess., p. 13.

Requiring employees to pursue contract grievance procedures in F.L.S.A. cases would bring about the same confusion and lack of uniformity that Congress legislated against, since each collective bargaining agreement has its own time limit for the filing of grievances. In this case, for example, an employee must file his written grievance "within Ten (10) days

[12] In *Schulte* the Court distinguished settlements through stipulated judgments by pointing out the importance of judicial proceedings:

> Even though stipulated judgments may be obtained, where settlements are proposed in controversies between employers and employees over violations of the Act, by the simple device of filing suits and entering agreed judgments, we think the requirement of pleading the issues and submitting the judgment to judicial scrutiny may differentiate stipulated judgments from compromises by the parties * * * [328 U.S. at 114, n. 8.]

of the knowledge of the incident" (A. 29); the contract also states that "the time allowed to process grievances is adequate" (A. 31). But Congress did not deem 10 days an adequate amount of time for an employee to raise a claim under the Act; it found instead that two years was necessary. And it set this federal standard not only because of the desire for uniformity mentioned above, but also because employees need this amount of time since they may be "afraid to sue or file a complaint, or they simply do not know what their rights are under the law." 93 Cong. Rec. 2258 (1947) (remarks of Senator McGrath). Thus, to require employees to process their F.L.S.A. claims in accordance with contract grievance procedures would be to contravene this explicit congressional policy and thereby diminish the protections Congress granted.

3. *Claims by employee representatives.* Congress has determined that individual employees, rather than their representatives, should prosecute and control their claims under the Act. In 1947, Congress deleted the portion of Section 16(b) which had provided that "employees may designate an agent or representative to maintain" an action in their behalf. See 52 Stat. 1069; S. Rep. No. 48, 80th Cong., 1st Sess., p. 49.

By contrast, the union, as representative of the employees, is responsible for controlling the processing of grievances. See *Vaca* v. *Sipes*, 386 U.S. 171. The contract in this case, for instance, provides that beyond Step I, where the employee files a written grievance, the union grievance committee or an officer of the union will control prosecution of the grievance and

may submit the matter finally to arbitration if it has not been satisfactorily adjusted (A. 29–30). While union control and responsibility have been deemed desirable for grievances arising out of contract disputes because "[s]uch activity complements the union's status as exclusive bargaining representative" and "enhance[s] the union's prestige with employees," *Republic Steel Corp* v. *Maddox,* 379 U.S. 650, 653, this has little relevance when the dispute involves rights under the Act, rights that cannot be diminished by collective bargaining. See *Brooklyn Savings Bank* v. *O'Neil,* 324 U.S. 697, 704, 710; see p. 25 *infra.*[13] More important, Congress has determined that F.L.S.A. claims are to be prosecuted by the employees themselves, not by their representatives.

4. *Public policy of the Act and the need for uniformity.* Unlike a collective bargaining contract, the Fair Labor Standards Act is concerned with more than simply adjustment of the working relationship of particular employees and their employer. It has a

[13] There is somewhat of an exception to this in Section 3(o) of the Act, 29 U.S.C. 203(o), which defines "hours worked" to exclude "any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement."

Also, in certain situations, a collective bargaining contract can make activity, otherwise not considered to be work under the Act, compensable at the statutory rate. See Section 4 of the Portal-to-Portal Act of 1947, 29 U.S.C. 254, under which travel time to and from the place of performance of principal activities, and activities that are preliminary or postliminary to the principal activity are not working time within 29 U.S.C. 207 unless the contract so provides.

public purpose. In enacting Section 7, the maximum hours provision, Congress sought "to spread employment by placing financial pressure on the employer through the overtime pay requirement." *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 40; see also *Overnight Motor Co.* v. *Missel*, 316 U.S. 572, 576–578; *Roland Co.* v. *Walling*, 326 U.S. 657, 669–670. The standards in the minimum wage and maximum hours provisions, 29 U.S.C. 206, 207, are to be applied in light of the Act's public purposes and to be applied uniformly so that no employer gains an unfair advantage over his competitor. See *Brooklyn Bank* v. *O'Neil, supra*, 324 U.S. at 710."

However, if these claims must be processed through grievance procedures and then submitted to arbitration, the public policy of the Act will be overshadowed, perhaps lost entirely. Uniformity will not

---

" Congress rejected an early House bill that would have prohibited the establishment of minimum wage and maximum hours for employees in occupations or industries where a "substantial portion of the employees" were covered by "collective bargaining agreements" and the "facilities for collective bargaining" were adequate to accomplish the purposes of the Act (H.R. Rep. No. 1452, 75th Cong., 1st Sess., p. 15). As explained in H.R. Rep. 2182, 75th Cong., 3d Sess., pp. 6–7 (1938):

> There are to be no differentials either between sections of the United States, between industries, or between employers. No employer in any part of the United States in any industry affecting interstate commerce need fear that he will be required by law to observe wage and hour standards higher than those applicable to his competitors. No employee in any part of the United States in any industry affecting interstate commerce need fear that the fair labor standards maintained by his employer will be jeopardized by oppressive labor standards maintained by those with whom his employer competes. * * *

be possible. Even if the matter reaches arbitration, arbitrators are concerned only with adjustment of contractual disputes between the particular parties to the contract. They do not necessarily follow *stare decisis*.[15] "Arbitrators do not have the benefit of judicial instruction on the law; they need not give their reasons for their results; the record of their proceedings is not as complete as it is in a court trial; and judicial review of an award is more limited than judicial review of a trial." *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198, 203; see also *Wilko* v. *Swan*, 346 U.S. 427.

5. *Enforcement by the Secretary of Labor.* The fact that the Secretary of Labor may sue, upon the employee's request, to recover wages withheld in violation of the Act, 29 U.S.C. 216 (c),[16] further indicates that Congress could not have intended to require employees to raise such claims by grievances before they are entitled to seek redress through the courts. That Congress empowered the Secretary to bring such actions reflects the public character of the Act, and plainly shows that Congress intended violations of the Act to be redressed in court even where the employee is unable or unwilling to bring the action himself. A system in which an employee must first pursue grievance procedures to vindicate his statutory rights,

---

[15] See Cox & Bok, *Labor Law* 519-520 (1965 ed.); Warren & Bernstein, *A Profile of Labor Arbitration*, 16 Lab. Arb. 970 (1951).

[16] In 1961, Congress also restored to the federal courts jurisdiction to order restitution of unpaid wages in injunction actions brought by the Secretary on his own initiative. 29 U.S.C. 217. Compare *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U.S. 288.

even though the Secretary may sue in court upon his own initiative, 29 U.S.C. 217, or upon the employee's request, 29 U.S.C. 216(c), is far-removed from the enforcement mechanism Congress found necessary in order to realize the goals stated in Section 2 of the Act, 29 U.S.C. 202.

B. THE DECISIONS OF THIS COURT IMPLEMENTING NATIONAL LABOR POLICY CONFIRM CONGRESS' INTENT IN THE FAIR LABOR STANDARDS ACT TO ALLOW SUITS FOR VIOLATION OF THE ACT TO BE BROUGHT DIRECTLY IN COURT

Petitioner relies on this Court's decisions in *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, and *Republic Steel* v. *Maddox,* 379 U.S. 650, in arguing that the employees in this case could not raise their claims in court because they have not invoked contract grievance procedures. In our view, however, consideration of these cases and this Court's decisions in *McKinney* v. *Missouri–K.–T.R. Co.,* 357 U.S. 265, and *U.S. Bulk Carriers* v. *Arguelles,* 400 U.S. 351, confirm that employees have, as Congress intended, direct access to courts in order to vindicate their rights under the Act.

In *Textile Workers Union* v. *Lincoln Mills, supra,* this Court held that Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. 185, which conferred jurisdiction on federal courts over "[s]uits for violation of contracts between an employer and a labor organization," also empowered courts in Section 301 suits to apply federal substantive law "which the courts must fashion from the policy of our national labor laws." 353 U.S. at 456. In the *Steelwork-*

ers Trilogy,[17] where a union brought Section 301 suits to compel arbitration, this Court upheld the union's claims on the basis of the national labor policy expressed in Section 203(d) of the L.M.R.A., 29 U.S.C. 173(d): "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." And in *Republic Steel Corp.* v. *Maddox, supra,* this Court, again relying upon Section 203(d), held that before an individual employee can sue in court for violation of the collective bargaining contract he must first attempt to invoke the contract grievance procedures.

In the present case, where the claims arise under a federal statute and do not involve interpretation of a collective bargaining agreement, see pp. 12–13 *supra*, *Republic Steel* does not require that the employees pursue grievance procedures. The national labor policy expressed in Section 203(d) of the Labor Management Relations Act and implemented in *Republic Steel* and other decisions is a policy in favor of arbitration as the means of settling collective bargaining disputes. But neither Congress nor this Court has ever suggested that grievance procedures in a labor con-

---

[17] *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564; *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593.

tract are the preferred method of vindicating an employee's federal statutory rights, particularly when those rights are independent of the contract.

To the contrary, as Mr. Justice Harlan, concurring, explained in *U.S. Bulk Carriers* v. *Arguelles*, 400 U.S. 351, 361, remitting an individual employee to the arbitral forum is favored only when the employee's "substantive rights derive solely from the contract" that the union has negotiated. However, when, as in this case, the employee asserts rights derived from a federal statute "the presumption of comprehensiveness of the arbitral remedy is * * * rebutted." 400 U.S. at 362. Thus, in *McKinney* v. *Missouri-K.-T. R. Co.*, 357 U.S. 265, 268, this Court held, unanimously,[18] that a returning serviceman "was not obliged * * * to pursue remedies possibly available under the grievance procedure set forth in the collective bargaining agreement" before bringing an action in court under Section 9(d) of the Universal Military Training and Service Act to require his former employer to comply with the Act's provisions regarding reemployment and seniority rights.[19] The Court so held despite the fact that determination of the statutory rights asserted by the serviceman "may necessarily involve interpre-

[18] Mr. Justice Black and Mr. Justice Douglas dissented on the merits. 357 U.S. at 274.

[19] This Court has also held that the remedies prescribed by statute remain available for vindication of the statutory right even though the parties proceed first in some alternative forum. See *National Labor Relations Board* v. *Strong*, 393 U.S. 357; *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, 270–271.

tation of a collective bargaining agreement." 357 U.S. at 268.[20]

With respect to rights claimed under the Fair Labor Standards Act, the reason for the rule in *McKinney* and in *Bulk Carriers,* see pp. 27–29 *infra,* is plain. Grievance proceedings are a part of the collective bargaining process between the union and the employer. But the minimum guarantees in Sections 6 and 7 of the Act cannot be diminished by bargaining, see, *e.g., Martino* v. *Michigan Window Cleaning Co.,* 327 U.S. 173, 177–178; *Walling* v. *Hardwood Co.,* 325 U.S. 419; *Coleman* v. *Jiffy June Farms, Inc.,* No. 71–1412, C.A. 5, decided November 29, 1971; 29 C.F.R. 778.316–.317, and a union should not be permitted to drop an employee's F.L.S.A. claim as the *quid pro quo* for a concession by the employer on some other matter.

Even if such a grievance reaches arbitration, the usual policies in favor of having an arbitrator determine the dispute are not present. Arbitrators may be versed in the common law of the shop and they may have expertise in applying and interpreting collective bargaining agreements. But F.L.S.A. claims, such as those of the employees here, require statutory interpretation (in the context of detailed legislative history), consideration of the judicial decisions, including those of this Court, that have dealt with F.L.S.A. claims involving similar or analogous circumstances, and attention to administrative determinations.

---

[20] *McKinney* is not cited in any of the opinions in *Bulk Carriers, supra.*

These are matters peculiarly within judicial competence, as Congress and this Court have recognized. And in the three decades that have passed since enactment of the Fair Labor Standards Act, a considerable body of law has developed through court decisions interpeting the Act. With respect to the employees' claim for overtime compensation in this case, for example, there is a long line of court decisions relevant to the issue whether "on call" time constitutes working time under the Act.

Thus, this Court has held that compensable working time under the Act is not limited to periods of active work, but includes as well idle time when this is required by the employer's schedule. See *Armour & Co.* v. *Wantock*, 323 U.S. 126, 133; *Skidmore* v. *Swift & Co.*, 323 U.S. 134. And there are numerous lower court decisions dealing with the question whether an employee who is "on call" during mealtime is engaging in compensable work under the Act. See, *e.g.*, *F. W. Stock & Sons* v. *Thompson*, 194 F. 2d 493, 496 (C.A. 6); *Biggs* v. *Joshua Hendy Corp.*, 183 F. 2d 515, 520 (C.A. 9); *Glenn L. Martin Nebraska Co.* v. *Culkin*, 197 F. 2d 981, 984–985 (C.A. 8), certiorari denied, 344 U.S. 866; *Douglass* v. *Hurwitz Co.*, 145 F. Supp. 29, 34, n. 16 (E.D. Pa.); *Schultz* v. *A–1 Ambulance Service, Inc.* 63 CCH Lab. Cas. ¶ 32,393 (E.D. Ark., decided September 22, 1970).[21] See also 29 C.F.R. 785.17–.19.

[21] These cases all rule in favor of the employee. Contrast *American Enka Corp. & United Textile Workers of America Local 815*, 65–2 CCH Arb. ¶ 8691 (Morristown, Tennessee, September 3, 1965), where the arbitrator denied the employees any compensation for interrupted lunch periods on the ground that under the contract, provisions for lunch periods could be changed only by mutual agreement.

While the doctrine of *Republic Steel, supra,* is thus inapposite,[22] the Court's decisions in *McKinney* v. *Missouri-K.-T.R. Co., supra,* which we have already discussed, see pp. 24–25 *supra,* and *U.S. Bulk Carriers, Inc.* v. *Arguelles,* 400 U.S. 351, are particularly relevant. In *Bulk Carriers* the Court held that seamen were entitled to sue in federal court for unpaid wages and the statutory penalty without having to exhaust grievance procedures. These decisions apply *a fortiori* to the present case, where the employees' statutory rights

---

[22] Petitioner has cited four decisions to support its position: *Donahue* v. *Susquehanna Collieries Co.*, 138 F. 2d 3 (C.A. 3); *Watkins* v. *Hudson Coal Co.*, 151 F. 2d 311 (C.A. 3), certiorari denied, 327 U.S. 777; *Evans* v. *Hudson Coal Co.*, 165 F. 2d 270 (C.A. 3); and *Beckley* v. *Teyssier*, 332 F. 495 (C.A. 9). To the extent that these cases stand for the proposition that employees seeking to assert F.L.S.A. claims in court must first pursue contract grievance procedures, they are inconsistent with this Court's decisions in *McKinney, supra,* and *Bulk Carriers, supra,* and, in our view, are in error. Other courts that have considered the matter have not followed the cases petitioner cites but have held instead that employees have direct access to courts in F.L.S.A. cases. See, *e.g.*, *Lexington Federation of Telephone Workers* v. *Kentucky Telephone Corp.*, 94 F. Supp. 894 (E.D. Ky.), affirmed, 202 F. 2d 153 (C.A. 6); *Ballard* v. *Consolidated Steel Corp. Ltd.*, 61 F. Supp. 996 (S.D. Calif.); *Bailey* v. *Karolyna Co.*, 50 F. Supp. 142, 143–144 (S.D. N.Y.); *Adams* v. *Union Dime Savings Bank*, 48 F. Supp. 1022 (S.D. N.Y.); *Mackin* v. *Bagold Corp.*, 8 CCH Lab Cas. ¶ 62,183 (S.D. N.Y.); *Stone* v. *William Andacht, Inc.*, 21 Misc. 2d 214, 191 N.Y.S. 2d 116 (N.Y. City Ct.); *Andacht* v. *William Andacht, Inc.*, 183 N.Y.S. 2d 62 (N.Y. City Ct.); *Berman* v. *N. Seidman & Son*, 22 CCH Lab. Cas. ¶ 67,362 (N.Y. Sup. Ct.); *Garrity* v. *Bagold Corp.*, 42 N.Y.S. 2d 257 (N.Y. Sup. Ct.), modified and affirmed, 267 App. Div. 353, 46 N.Y.S. 2d 637; *Matter of City Bank Farmers Trust Co.*, 179 Misc. 770, 39 N.Y.S. 2d 842 (N.Y. Sup. Ct.); *E. & A. Building Corp.* v. *Gunderson*, 6 CCH Lab. Cas. ¶ 61, 556 (N.Y. Sup. Ct.).

are derived entirely from the statute itself and raise no issues of contract interpretation—a fact that avoids the difficulty that divided the Court in *Bulk Carriers*.

In *Bulk Carriers*, the claimant's statutory and contract rights were interdependent [33]—that is, the statute created no substantive rights but simply provided a penalty for the late payment of wages. The question whether the claimant was entitled to the statutory penalty depended on whether any wages were due, and this in turn depended "entirely on interpretation and application of the bargaining agreement" (Mr. Justice White, dissenting, 400 U.S. at 371).[34] In the present case, however, the terms of the contract are irrelevant to the employees' claims. Whether on-call time is com-

---

[33] This was true also in *McKinney*, *supra*, 357 U.S. at 268.

[34] Compare *Collyer Insulated Wire*, 77 LRRM 1931, 192 NLRB No. 150 (August 20, 1971), where the Board, over the union's objection, deferred to arbitration the question whether the company's changes in wages and working conditions violated the collective bargaining agreement, in which event such changes would also constitute an unfair labor practice. In deferring to arbitration, the Board majority emphasized that the "contract and its meaning * * * lie at the center of this dispute," whereas "the Act and its policies become involved only if it is determined that the agreement between the parties, examined in the light of its negotiating history and the practices of the parties thereunder, did not sanction [the company's] right to make the disputed changes" (77 LRRM 1936).

The Board also reserved jurisdiction in order to "guarantee that there will be no sacrifice of statutory rights if the parties' own processes fail to function in a manner consistent with the dictates of our law" (77 LRRM 1937). In this connection, the Board, in order "to effectuate the policies of the Act," may review *de novo* the factual and legal determinations underlying arbitral awards. See, *e.g.*, *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432, 436–438; *Carey* v. *Westinghouse Corp.*, *supra*, 375 U.S. 261, 271–272.

pensable depends not on the terms of the contract, but on the provisions of the Fair Labor Standards Act, see p. 13 *supra*, and on whether these employees were already working 40 or more hours a week, which would entitle them to receive the premium overtime rate required by the Act for additional work time.

Thus, unlike the Seaman's Act involved in *Bulk Carriers*, the Fair Labor Standards Act not only provides the remedy (recovery of unpaid overtime compensation, together with liquidated damages and attorney's fees) but also creates the substantive right (compensation for overtime work at one and one-half times the employee's regular rate). That an arbitrator might interpret the collective bargaining agreement as also requiring petitioner to compensate these employees for on-call time does not alter the statutory nature of respondents' claim, nor, we submit, compel them to exhaust their contract grievance procedures before filing suit under Section 16(b) of the Fair Labor Standards Act.

Moreover, unlike *Bulk Carriers* where Congress merely provided a forum for recovery of the statutory penalty, Congress defined the rights granted by the Fair Labor Standards Act by intertwining the standards set by the Act with the manner in which they are to be enforced—by litigation in a court of law. And as we have discussed in detail, pp. 14 to 22 *supra*, Congress' intent to afford direct access to the courts is even more apparent from the provisions and policies of the present Act than it was in *Bulk Carriers*, or in *McKinney*.

CONCLUSION

The judgment of the Supreme Court of Iowa should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

A. RAYMOND RANDOLPH, JR.,
Assistant to the Solicitor General.

RICHARD F. SCHUBERT,
Solicitor,
CARIN ANN CLAUSS,
MICHAEL H. LEVIN,
HELEN W. JUDD,
Attorneys,
Department of Labor.

JANUARY 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972